IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.731 OF 1991
WITH
FIRST APPEAL NO.733 OF 1991

Smt Bhagirathi Tukaram Mhatre
(since deceased through her
heir)

Hirabai Narayn Mhatre,
Age: 52 yrs.,
R/o.Karanjade, Taluka Panvel,
District Raigad. ...Appellant
(In both Appeals)

Versus

The Special Land Acquisition
Officer, Raigad. ...Respondent
(In both Appeals)

Shri B.K.Raje for the Appellant in both Appeals.

Shri B.H.Mehta, A.G.P for the Respondent in both Appeals.

CORAM : ABHAY S.OKA, J.
DATED : 04th December, 2007.

ORAL JUDGENT:

1. Heard advocates appearing for the parties. First Appeal No.731 of 1991 arises out of the judgment and award dated 16th June, 1990 in Land Acquisition Reference No.197 of 1989. The appellant is the original claimant in the said reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). The land subject matter of the said reference is survey No.101, Hissa No.3 + 5A admeasuring

12,160 sq meter situated at village Karanjade, Taluka Panvel, District Raigad. The said land was notified under section 4 of the said Act on 03rd February, 1970 for the public purpose of setting up of satellite city of Navi Mumbai. An award under section 11 of the said Act was passed on 23rd September, 1986. In application for reference under section 18 of the said Act, the appellant claimed the market value at the rate of Rs.15/- per sq meter. By the impugned judgment and award, the Reference Court has fixed the market value at the rate of Rs.7/- per sq meter. The Appeal haas has been preferred by the appellant claiming enhancement in market value.

2. The First Appeal No.733 of 1991 arises out of judgment and award dated 16th June, 1990 passed in Land Acquisition Reference No.87 of 1989. The said reference relates to land bearing survey No.101, Hissa No.2 admeasuring 12440 sq meter situated at village Karanjade, Taluka Panvel, District Raigad. The appellant is the claimant in the said Reference. The said land was also notified under the same notification which is subject matter of land in Land Acquisition Reference No.197 of 1989 (First Appeal No.731 of 1991). The date of the award under section 11 of the said Act is also identical. In this case also the

appellant-claimant claimed market value of Rs.15/- per sq meter in the reference application and the Reference Court has granted compensation at the rate of Rs.7/- per sq meter. The appeal has been preferred by the appellant claimaing enhancement in market value.

3. The learned advocate for the appellant in both the appeals stated that the location of the acquired lands subject matter of the appeals is more or less similar. He placed reliance on the decision dated 21st April, 2006 of learned Single Judge of this Court in the case of the State of Maharashtra Vs. Ismaile Abdul Rehman Navadekr (since deceased by his Legal Representatives) in First Appeal No.30 of 1993. He pointed out that for a similarly located land in the same village which was notified for the same public purpose under the same notification under section 4 of the said Act, this Court accepted that rate of Rs.13/- per sq meter fixed by the Reference Court in the said case was just and reasonable. He submitted that these appeals will be governed by the said decision of this Court.

4. The learned A.G.P submitted that the judgment in First Appeal No.30 of 1983 is rendered in the peculiar facts of the said case. He submitted that infact the

learned single Judge has held that the judgment of Division Bench in First Appeal No.875 of 1985 as well as judgment of a single Judge of this Court in the case of Mohommed Ali Vs. Special Land Acquisition Officer [2005 (2) Maharashtra Law Journal Page 143] are not applicable. He submitted that there is no evidence in these two appeals regarding the distance of the acquired land from Bombay-Pune highway as well as Panvel-Uran road. He, therefore, submitted that the decision in the First Appeal No.30 of 1993 will have no application to the present cases. He submitted that apart from the said judgment, there is no other evidence on record to justify enhancement in the market value.

5. I have given a careful consideration to the submissions made by the learned advocates appearing for the parties.

6. In both the Land Acquisition References subject matter of these two appeals, the appellant examined Shri Jeevan Narayan Kulkarni, a valuer. The valuation report submitted by Shri Kulkarni has been duly proved in evidence. In respect of lands subject matter of both the appeals, the report of Shri Kulkarni discloses that the distance from Sion-Pnavel highway is 5100 meters and the distance between the acquired lands and Panvel-Uran

road is 320 meters. Perusal of the evidence of Shri Kulkarni shows that his report was proved and there is no cross-examination on contents of the said report with reference to specific distances mentioned by Shri Kulkarni. Therefore, that part of the report of Shri Kulkarni will have to be accepted and relied upon.

7. It is not in dispute that the lands subject matter of the present appeals and the land which was subject matter of First Appeal No.30 of 1993 are from the same village and were notified by the same notification under section 4 of the said Act. At the relevant time all the three lands were agricultural lands. It will be necessary to refer to paragraph No.13 of the decision in the First Appeal No.30 of 1993. Paragraph No.13 reads thus:

> "13. The valuation report (Exh.38) prepared by CW 2 J.N.Kulkarni shows that Bombay-Pune National Highway No.4 is at a distance of 1760 meters from the land acquired; Sion-Panvel Highway is at a distance 5120 meters and Panvel-Uran road is at a distance of 480 meters. Taking into consideration the above distances, the rate fixed by the Reference Court at Rs.13/- per square meter appears to

be just and reasonable. It is neither on higher side nor on lower side. Hence, the same rate is hereby confirmed".

8. Thus, for more or less similarly situated land from the same village notified under the same notification, this Court has accepted that the market value of the land was Rs.13/- per sq meter on the relevant date. There is nothing on record to show that the judgment of this Court in First Appeal No.30 of 1993 has been subjected to any challenge. Thus, the judgment of this Court in First Appeal No.30 of 1993 is a judgment fixing the market value of a land which is comparable in all respects to the acquired land subject matter of both the appeals and therefore, the market value of the acquired lands will have to be fixed at the rate of Rs.13/- per sq meter and the appeals must succeed in part to that extent.

9. As the award under section 11 of the said Act has been made on 23rd September, 1986 in both the cases, there cannot be any dispute regarding grant of statutory benefits.

10. Hence, I pass the following order:

(i) Both the appeals are partly allowed.

(ii) The impugned judgments and awards are modified by holding that market value of the acquired land is Rs.13/- per sq meter.

(iii) In addition to market value at the rate of Rs.13/- per sq meter, the appellant will be entitled to statutory benefits under section 23(1-A), section 23(2) and section 28 of the Land Acquisition Act, 1894.

(iv) The Reference Court will calculate the total compensation payable to the appellant within a period of four months from the date of receipt of writ of this judgment.

(v) The respondent shall pay proportionate costs of the reference proceedings and these appeals to the appellant.

(vi) The Appeals are partly allowed in above terms.

(vii) Writ to be sent down early.

JUDGE